REMARKS

In response to the Restriction Requirement, Applicants hereby elect, with traverse, to prosecute Group II, which includes and is drawn to claims 3-7, 9, 10, 12 and 13. Applicants reserve the right to prosecute the non-elected subject matter of claims in subsequent divisional applications.

Applicants submit that the invention encompassed by the claims of Group II (drawn to an isolated polynucleotide) could be examined at the same time as the inventions encompassed by the claims of Groups III-VIII. For example, a search of the prior art to determine the novelty of the polynucleotide of the invention would provide information regarding the novelty of the encoded polypeptide, transgenic organism containing it, methods of making, using and detecting the polynucleotide and the encoded polypeptide.

Moreover, Groups V-VIII claims are "method of making" and "method of use" claims which all depend from the product claims 3, 5 and 12 of Group II. Therefore, upon allowance of Group II claims, the method of detection claims of Group V and VI and use claims of Groups VII and VIII should be rejoined and considered together, in accordance with the Commissioner's Notice in the Official Gazette of March 26, 1996, entitled "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai, In re Brouwer* and 35 U.S.C. § 103(b)" which sets forth the rules, upon allowance of product claims, for rejoinder of process claims covering the same scope of products.

In addition, Applicants traverse the Restriction Requirement as it relates to the polynucleotide containing transgenic organism claim of Group III. A search required to determine the novelty of polynucleotide would substantially overlap with a search of the prior art to determine the novelty of transgenic organism containing the polynucleotide.

On similar grounds, Applicants traverse the Restriction Requirement as it relates to the antibody claim of Group IV. Proper search required to determine the novelty of nucleotide would include polypeptide and would substantially overlap with a search of the prior art to determine the novelty of antibodies against the polypeptides.

Accordingly, because the searches required to identify prior art relevant to the claims of Groups II-VIII would substantially overlap, Applicants respectfully submit that examination of

originally filed claims 1-18, 28, and 29 would pose no undue burden. Thus, Applicants request reconsideration and withdrawal of the Restriction Requirement and examination of the claims in Groups II - VIII.

Applicants submit that claims substantially corresponding to the claims of group I have already been examined and allowed in the parent application. For the Examiner's convenience Applicants provide the issued claims of the parent application below:

US 6,274,138

1. An isolated polypeptide selected from the group consisting of:

a) a polypeptide comprising the amino acid sequence of SEQ ID NO:1, and

b) a fragment of a polypeptide comprising the amino acid sequence of SEQ ID NO:1, wherein said fragment has malate dehydrogenase activity.

2. The polypeptide of claim 1, having the amino acid sequence of SEQ ID NO:1.

3. A composition comprising the polypeptide of claim 1 and an excipient.

4. A method of screening a compound for effectiveness as an activator of a polypeptide of claim 1, the method comprising:

a) exposing a sample comprising a polypeptide of claim 1 to a compound, and

b) detecting, directly or indirectly, an increase of malate dehydrogenase activity.

5. A method of screening a compound for effectiveness as an inhibitor of a polypeptide of claim 1, the method comprising:

a) exposing a sample comprising a polypeptide of claim 1 to a compound, and

b) detecting directly or indirectly, an decrease of malate dehydrogenase activity.

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. **09-0108.**

Respectfully submitted,

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